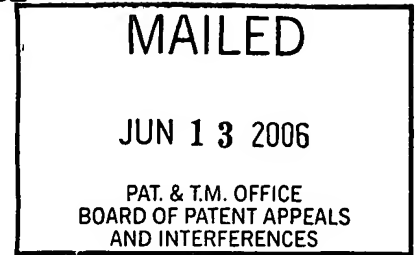


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte LESLIE E. SMITH and JOHN C. MONTAGNA

Application No. 10/743,936

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 9, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed September 13, 2005, did not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by

the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed September 13, 2005:

- 1) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental appeal brief in compliance with 37 CFR § 41.37 is required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

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In addition, on February 23, 2006, appellants filed a Request for Reconsideration on Decision on Petition. It is not clear from the record whether the examiner considered the Request for Reconsideration. A communication notifying appellants of the response to the Request for Reconsideration is required.

Also, on April 19, 2004 and July 6, 2004, appellants filed Information Disclosure Statements (IDSs). It is not clear from the record whether the examiner considered the IDSs submitted or whether the examiner notified appellants of why the submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

Accordingly, it is


ORDERED that this application be returned to the examiner to: 1) hold the appeal brief of September 13, 2005 defective; 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37; 3) consideration of the Request for Consideration on Decision on Petition filed February 23, 2006; 4) consideration of the Information Disclosure Statements filed April 19, 2004 and July 6, 2004; 5) appropriate written notification by the examiner to appellants

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of such consideration; and 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


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DMS/lbg